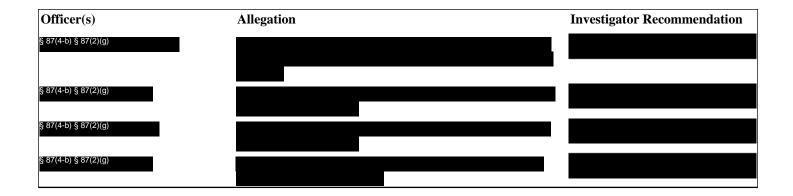
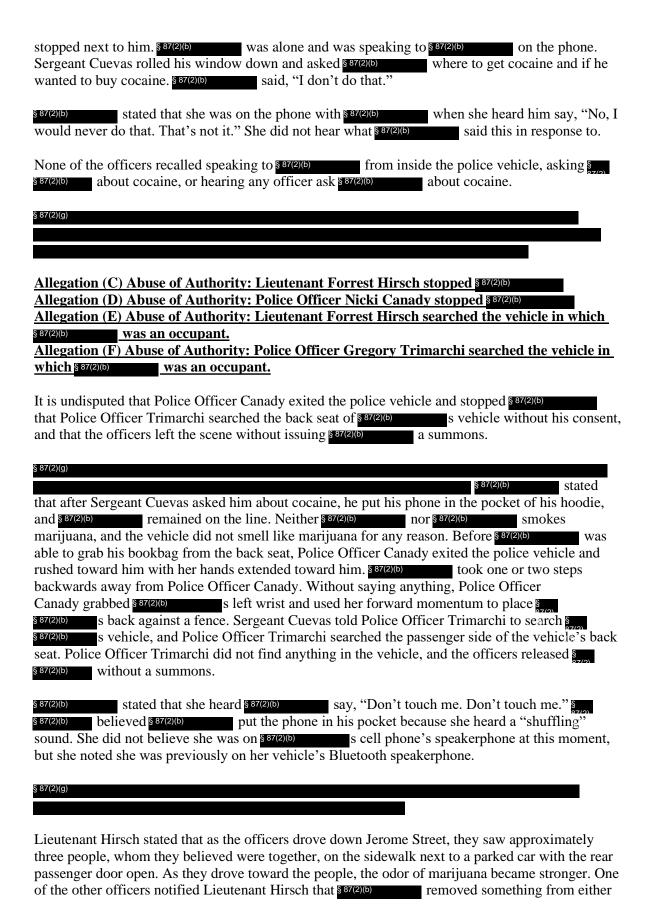
## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	<b>V</b>	Force	☐ Discourt.	U.S.
Jean Paul Lozada		Squad #2	202002052	V	Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:		P	recinct:	18 Mo. SOL	EO SOL
Thursday, 03/05/2020 11:45 PM					75	9/5/2021	4/22/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:	:	Date/Time	e Received at CC	RB
Wed, 03/11/2020 1:29 PM		CCRB	On-line website		Wed, 03/1	1/2020 1:29 PM	1
Complainant/Victim	Type	Home Addre	ess				
Witness(es)		Home Addre	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. SGT Gabriel Cuevas	02226	945633	PBBN SU				
2. LT Forrest Hirsch	00000	941905	PBBN SU				
3. POM Gregory Trimarchi	09057	957227	CD OFF				
4. PO Nicki Canady	02568	960316	081 PCT				
Officer(s)	Allegation	on			Inve	estigator Recor	nmendation
A.LT Forrest Hirsch	Abuse: L	Lieutenant Forrest Hirsch	n questioned § 87(2)(b)				
B.SGT Gabriel Cuevas	Abuse: S	ergeant Gabriel Cuevas	questioned § 87(2)(b)				
C.LT Forrest Hirsch	Abuse: L	ieutenant Forrest Hirsch	h stopped § 87(2)(b)				
D.PO Nicki Canady	Abuse: P	Police Officer Nicki Can	ady stopped § 87(2)(b)				
E.LT Forrest Hirsch	Abuse: L which § 8	tieutenant Forrest Hirsch 7(2)(b) was an occ		le in			
F.POM Gregory Trimarchi		Police Officer Gregory T n which § 87(2)(b)	rimarchi searched th	ne			
G.SGT Gabriel Cuevas	Force: Se § 87(2)(b)	ergeant Gabriel Cuevas	used a chokehold ag	ains	t		
H.SGT Gabriel Cuevas	Force: Se	ergeant Gabriel Cuevas :	restricted § 87(2)(b)	)	s		
I.SGT Gabriel Cuevas	Force: Se § 87(2)(b)	ergeant Gabriel Cuevas	used physical force a	agair	nst		
J.SGT Gabriel Cuevas	Abuse: S to § 87(2)(b)	ergeant Gabriel Cuevas	refused to provide h	nis na	ame		
K.SGT Gabriel Cuevas	Abuse: S	ergeant Gabriel Cuevas Imber to § 87(2)(b)	refused to provide h	nis			
L.SGT Gabriel Cuevas	Abuse: S	ergeant Gabriel Cuevas with a business card.	failed to provide §	2)			
M.LT Forrest Hirsch	Abuse: L	ieutenant Forrest Hirsch with a business card.	n failed to provide	(2)			
§ 87(4-b) § 87(2)(g)							



## **Case Summary**

On March 11, 2021, \$87(2)(b) filed this complaint via the CCRB website (Board Review 02). On March 17, 2021, a duplicate complaint, which he had filed via telephone with the Internal Affairs Bureau on March 6, 2020, was received from IAB (Board Review 01). On March 5, 2020, at approximately 11:45 p.m., §87(2)(b) parked across the street from his , and he exited his car and reached into the back seat to retrieve his backpack. A team of officers led by Lieutenant Forrest Hirsch of Patrol Borough Brooklyn North Public Safety drove up to §87(2)(b) Sergeant Gabriel Cuevas allegedly asked if he wanted cocaine or knew where to buy cocaine (Allegations A and B – Abuse of Authority: Question, § 87(2)(9) and § 87(2)(b) said no. Police Officer Nicki Canady exited the police vehicle, grabbed (\$37(2)) s arms, and placed him against a fence (Allegations C and D – Abuse of Authority: Stop, \$87(2)(9) Police Officer Trimarchi § 87(2)(b) Authority: Vehicle Search, § 87(2)(9) verbally protested the stop and attempted to wiggle his arms free from the officers' grip. Sergeant Cuevas allegedly choked by grabbing and applying pressure to the front of his neck, and lifted [87(2)(b)] the ground by his neck with one hand (Allegations G, H, and I - Force: Chokehold, Restricted Breathing, Physical Force; \$87(2)(9) without a summons. § 87(2)(6) asked Sergeant Cuevas for his name and shield number, but he allegedly did not respond (Allegations J and K - Abuse of Authority: Refusal to Provide Name/Shield Number, \$87(2)(9) The officers did not provide any business cards to \$87(2)(b) (Allegations L and M – Abuse of Authority: Failure to Provide RTKA Card; \$87(2)(9) § 87(2)(g) No video footage of this incident was found. § 87(2)(9) **Findings and Recommendations** Allegation (A) Abuse of Authority: Lieutenant Forrest Hirsch questioned [Se7(2)(b)] Allegation (B) Abuse of Authority: Sergeant Gabriel Cuevas questioned 887(2)(6) was interviewed on March 20, 2020 (Board Review 03) and provided a follow-up telephone statement on April 23, 2020 (Board Review 04). \$87(2)(b) s girlfriend, \$87(2) was interviewed on April 7, 2020 (Board Review 05). Police Officer Trimarchi (Board Review 06) and Sergeant Cuevas (Board Review 07) were interviewed on May 14, 2021. Lieutenant Hirsch was interviewed on June 24, 2021 (Board Review 08). Police Officer Canady was interviewed on August 25, 2021 (Board Review 09). stated that he parked § 87(2)(b) s vehicle across the street from his house, and as he reached into the back seat form the sidewalk to grab his bookbag, an unmarked police vehicle



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the front of his waistband or his jacket and threw it into the vehicle, though Lieutenant Hirsch did not observe this himself. Lieutenant Hirsch did not recall seeing § 87(2)(b) or the other two civilians with him carrying anything, and he did not see anyone who appeared to be smoking. The officers decided together to investigate the scene. Lieutenant Hirsch did not give any specific instructions or commands to the other officers during the incident. Police Officer Trimarchi stopped the police vehicle, and Police Officer Canady and Sergeant Cuevas got out and approached The other two civilians observed the ensuing interaction and were not approached by the officers. At some point, Police Officer Trimarchi and Lieutenant Hirsch exited the police vehicle. Lieutenant Hirsch stood about three to five feet behind the other officers. As Police Officer Trimarchi approached the car, \$87(2)(b) attempted to push past Police Officer Canady and Sergeant Cuevas, raised his voice, cursed, and told Police Officer Trimarchi he couldn't look through his car. Police Officer Canady grabbed \$87(2)(b) s wrist, walked him back from the curb to the fence, and told him to not interfere with the investigation. Police Officer Trimarchi opened the door, and Lieutenant Hirsch stood by the fixed rear window and used his flashlight to illuminate the vehicle as Police Officer Trimarchi searched the vehicle from the rear passenger-side door. Police Officer Trimarchi informed Lieutenant Hirsch that there was a small amount of marijuana in the back seat. Lieutenant Hirsch could only see the back of the headrests and did not see any marijuana in the vehicle. The officers decided to warn and admonish § 87(2)(b) marijuana because his unit generally does not give summonses for small amounts of marijuana. Police Officer Canady stated that as the officers drove by, § 37(2)(b) locked eyes with them and appeared nervous. His wide-eyed expression suggested to Police Officer Canady that \$87(2)(b) "was caught." \$87(2)(b) who was alone, threw what appeared to be a small pill bag of marijuana into the back seat of the vehicle. The police vehicle's windows were rolled down, and Police Officer Canady could not smell anything as Police Officer Trimarchi drove toward nor did she have any reason to believe § 87(2)(b) consumed marijuana. Police Officer Canady exited the police vehicle "to make sure what [she] saw was what [she] saw," but she did not get the chance to do so because as she approached \$87(2)(6) he put his hand in his waistband (under his shirt, above his crotch area). Police Officer Canady's experience suggested to could have possibly been carrying a gun in his waistband. Police Officer Canady could not see anything that §87(2)(b) may have been holding in that area. She believed it to be a gun because "usually, people who carry guns, that's one of the places they hold it, and the positioning of his hand led [her] to believe it might be a gun." Police Officer Canady did not have any other reason to believe that § 87(2)(b) was holding a gun. § 87(2)(b) walked backwards on the sidewalk away from his car and toward a gate. Police Officer Canady said, "Police," and grabbed the wrist of the arm in § 87(2)(b) s waistband. Police Officer Trimarchi searched § s vehicle and said he found a bag of marijuana. Police Officer Canady did not see the marijuana after \$87(2)(b) initially threw it into the vehicle. Lieutenant Hirsch and Sergeant Cuevas used their discretion and decided to not confiscate the marijuana or summons § 87(2)(b) for the marijuana. Sergeant Cuevas stated that as the officers drove by, §87(2)(b) looked at the police vehicle for a second or two before looking down, grabbing an object from his person and throwing it into the back seat. Sergeant Cuevas could not clearly see the object that \$87(2)(b) threw into the vehicle, or where §87(2)(6) had grabbed the item from, but he suspected that it might be a weapon because the object was approximately five inches long and looked rigid and dark. Police Officer Canady exited the vehicle and approached \$87(2)(b) She leaned her head towards the vehicle to try and see what \$87(2)(b) had thrown into the back seat, and as she did this, she extended her arms outwards to create space between \$87(2)(b) and the vehicle. \$87(2)(b) did not step away but instead grabbed both of Police Officer Canady's forearms. Police Officer

Canady grabbed \$87(2)(b) back, and she and Sergeant Cuevas moved \$87(2)(b)

the fence. Police Officer Trimarchi searched the vehicle for a few seconds before saying that there was "a pound" of marijuana in the back seat. Sergeant Cuevas' back was towards Police Officer Trimarchi during the search, and he did not see the marijuana. Sergeant Cuevas believed that the amount of marijuana in \$17(2)(0) see some session was beyond the violation amount. Sergeant Cuevas made the decision to let \$17(2)(0) go because \$187(2)(0) had marijuana, which was not what the officers were looking for.

Police Officer Trimarchi stated that as he drove down Jerome Street, he saw \$87(2)(6) and another male standing by \$87(2)(6) are solved into his waistband, pulled something out, and tossed it into the back seat of the car through the rear passenger door. From his vantage point Police Officer Trimarchi could not see what \$87(2)(6) had pulled out, but since this behavior was consistent with someone possibly concealing a weapon, he decided to stop the police vehicle and investigate. The rear passenger door of the vehicle was open, and Police Officer Trimarchi saw a small amount of marijuana in the back seat in plain view. He did not recall what kind of container the marijuana was inside. There was no notable odor or any indication that either of the men had consumed marijuana. Police Officer Trimarchi searched the immediate area in the rear of the vehicle to ensured that all of the contraband was located, and he did not see what was happening outside the vehicle as he searched it. There was only a small, violation amount of marijuana in the vehicle. The officers released \$87(2)(6) with a warning. Police Officer Trimarchi did not youcher the marijuana.

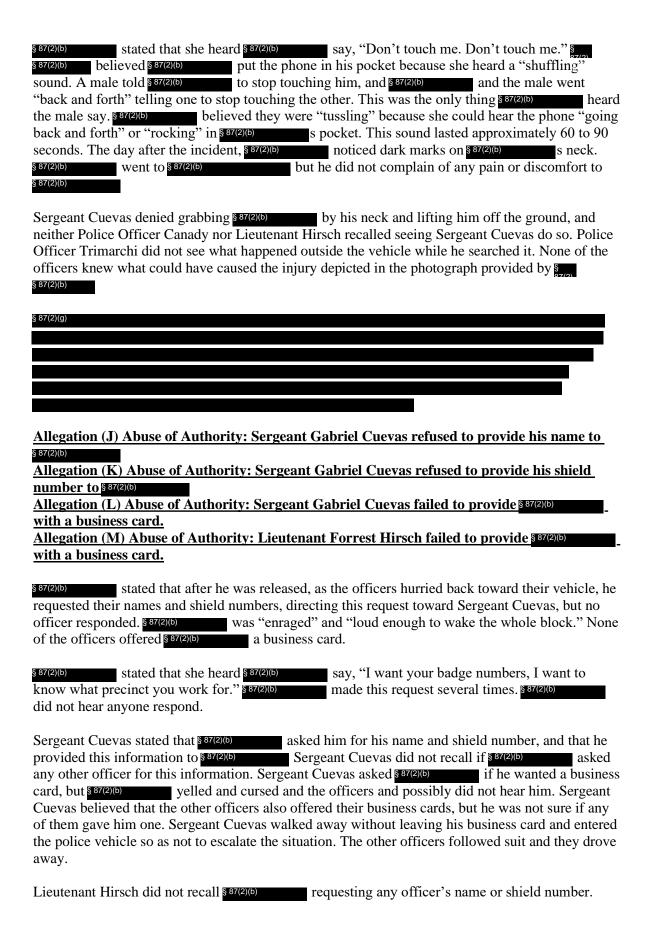
An officer may stop and detain an individual if he or she has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. <u>People v. DeBour</u>, 40 N.Y.2d 210 (1976) (Board Review 10).

An individual in a high-crime area, who has a weighted-down bulge in his pocket, changing course after noticing officers, blading his body as an officer approaches him, and attempting to block the officer's hand from touching the bulge, only provides the officers with founded suspicion and, in totality, does not create the reasonable suspicion necessary to stop the individual <u>People v. Gerard</u>, 942 N.Y.S.2d 112 (2012) (Board Review 11).

Under the general automobile exception, an officer must have probable cause to believe that a vehicle contains evidence or contraband in order to conduct a warrantless search of the vehicle. Officers may also conduct a limited search of a vehicle to retrieve a weapon if they reasonably believe that the weapon poses an immediate threat to their safety. Once the individual has been removed from the vehicle and no longer has access to the weapon inside the vehicle, this exception no longer applies People v. Torres, 74 N.Y.2d 224 (1989) (Board Review 12).

7(2)(g)	
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§ 87(2)(g)
§ 87(2)(g)
5 T (-7/8)
Allegation (G) Force: Sergeant Gabriel Cuevas used a chokehold against \$87(2)(5)
Allegation (H) Force: Sergeant Gabriel Cuevas restricted \$87(2)(5) s breathing.
Allegation (I) Force: Sergeant Gabriel Cuevas used physical force against 887(2)(5)
stated that as Police Officer Canady and Sergeant Cuevas held him against the fence,
he verbally protested Police Officer Trimarchi's search of his vehicle. Sergeant Cuevas then
grabbed the front of \$87(2)(b) s neck with his right hand, lifted \$87(2)(b) off the ground
with one hand, and choked \$87(2)(b) against the fence for approximately five to ten seconds.
could not breathe at all and made wheezing/choking noises while Sergeant Cuevas
could not breathe at an and made wheezing/choking hoises wille bergeam cuevas
choked him. Two days after the incident, \$87(2)(6) felt aches in his neck, and the following
choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following
choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following day, he saw marks on the left side of his neck. \$87(2)(b) went to \$87(2)(b) where he received a scan and was told his neck showed signs of abrasions.
choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following day, he saw marks on the left side of his neck. \$87(2)(b) went to \$87(2)(b) where he received a scan and was told his neck showed signs of abrasions.  A photograph provided by \$87(2)(b) (Board Review 13) shows what appears to be abrasions or
choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following day, he saw marks on the left side of his neck. \$87(2)(b) went to \$87(2)(b) where he received a scan and was told his neck showed signs of abrasions.
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choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following day, he saw marks on the left side of his neck. \$87(2)(b) went to \$87(2)(b) where he received a scan and was told his neck showed signs of abrasions.  A photograph provided by \$87(2)(b) (Board Review 13) shows what appears to be abrasions or scratch marks on the left side of his neck.  \$87(2)(b) (Board Review 14) state that he informed the staff that officers pushed him against a gate and lifted him by his neck, and that he
choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following day, he saw marks on the left side of his neck. \$87(2)(b) went to \$87(2)(b) where he received a scan and was told his neck showed signs of abrasions.  A photograph provided by \$87(2)(b) (Board Review 13) shows what appears to be abrasions or scratch marks on the left side of his neck.  887(2)(b) (Board Review 14) state that he informed the staff that officers pushed him against a gate and lifted him by his neck, and that he came to the hospital with neck pain that had worsened since the incident. The medical records
choked him. Two days after the incident, \$87(2)(b) felt aches in his neck, and the following day, he saw marks on the left side of his neck. \$87(2)(b) went to \$87(2)(b) where he received a scan and was told his neck showed signs of abrasions.  A photograph provided by \$87(2)(b) (Board Review 13) shows what appears to be abrasions or scratch marks on the left side of his neck.  \$87(2)(b) (Board Review 14) state that he informed the staff that officers pushed him against a gate and lifted him by his neck, and that he



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None of the officers offered \$87(2)(b) their business cards. Lieutenant Hirsch did not offer \$87(2)(b) his business card because he did not directly interact with \$87(2)(b)
Police Officer Canady stated that \$87(2)(b) did not ask her or any other officer for their name or shield number. Police Officer Canady did not recall whether she or any other officer offered or provided a business card to \$87(2)(b)
Police Officer Trimarchi stated that \$87(2)(b) asked any other officer for this information. Police Officer Trimarchi did not give his business card to \$87(2)(b) or recall any other officer doing so.
According to NYC Administrative Code 14-174, officers must offer a business card to any individual with which they conduct a law enforcement activity, such as a stop or a vehicle search, at the conclusion of any such activity that does not result in an arrest or summons (Board Review 28).
§ 87(2)(g)
\$ 87(2)(g)
§ 87(4-b) § 87(2)(g)
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§ 87	(4-b) § 8	87(2)(g)
§ 87	(4-b), §	87(2)(g)
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§ 87	(2)(g), §	§ 87(4-b)
§ 87	(4-b), §	87(2)(g)
§ 87	(4-b), §	87(2)(9)
		§ 87(2)(g), § 87(4-b)
		Civilian and Officer CCDD Histories
		Civilian and Officer CCRB Histories
•	§ 87(	has been party to one other CCRB complaints and has been named as a victim in
	no	other allegations (Board Review 25):
	0	§ 87(2)(b)
•	Lie	eutenant Forrest Hirsch has been a member of service for 15 years and has been a subject in
		other CCRB complaints and 60 other allegations, of which six were substantiated in three
	cas	
	0	201016064 involved substantiated allegations of Frisk and Stop. The Board recommended
	0	charges, and the NYPD imposed instructions.  201306080 involved allegations of Premises Entered/Searched and Offensive Language –
	0	Race. The Board recommended charges, and Lieutenant Hirsch forfeited five vacation days
	0	201908017 involved substantiated allegations of Discourtesy – Action and Discourtesy –
		Word. The Board recommended charges, and the NYPD has not yet taken any disciplinary
		action.
	0	§ 87(2)(g)

- Sergeant Gabriel Cuevas has been a member of service for 13 years and has been a subject in 16 other CCRB complaints and 50 other allegations, of which nine were substantiated in three cases.
  - 201610447 involved substantiated allegations of Frisk, Refusal to Provide Name/Shield Number, and Stop. The Board recommended Command Discipline B, and the NYPD imposed Command Discipline A.
  - 201804454 involved substantiated allegations of Frisk and Search of Person. The Board recommended Command Discipline B, and the NYPD imposed Command Discipline A.
  - 201909824 involved two substantiated allegations of Frisk, and two substantiated allegations of Search of Person. The Board recommended Command Discipline B, and the NYPD has not yet taken any disciplinary action.
  - One allegation of Refusal to Provide Name/Shield Number has been substantiated against Sergeant Cuevas, and two were unsubstantiated. It was alleged that Sergeant Cuevas did not provide his shield number to an individual upon request in case 201610447 (substantiated). 201803636 (unsubstantiated), and 201904945 (unsubstantiated).
- Police Officer Gregory Trimarchi has been a member of service for seven years and has been a subject in three other CCRB complaints and six other allegations, none of which was substantiated. § 87(2)(9)

## Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 26, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 29).

[§ 87(2)(b)] [§§ 86(1)(	(3)&(4)] [§ 87(2)(c)]		
Squad:02			
Investigator: _	Jean-Paul Lozada Signature	SI Jean-Paul Lozada Print Title & Name	11/26/2021 Date
Squad Leader: A	dexander Opoku-Agyemang Signature	IM Alexander Opoku-Agyemang Print Title & Name	11/26/2021 Date
Reviewer: _	Signature	Print Title & Name	Date